

Tax Chamber
First-tier Tribunal for Scotland



[2025] FTSTC 11

Ref: FTS/TC/AP/25/0014

Land and Buildings Transaction Tax – Joint buyers who had not previously cohabited and both had their own main residence – one buyer sold that residence within 18 months of the chargeable transaction – the other sold on the day of the chargeable transaction – whether repayment of ADS – no

DECISION NOTICE

IN THE CASE OF

Ms Julie Rose Kimm

Appellant

- and -

Revenue Scotland

Respondent

**TRIBUNAL: ANNE SCOTT
CHARLOTTE BARBOUR**

The Tribunal determined the appeal on 18 November 2025 without a hearing under the provisions of Rule 27 of The First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017 having first read the Notice of Appeal, and attachments, dated 1 August 2025 and Revenue Scotland's Statement of Case, and attachments, received by the Tribunal on 16 September 2025 and the Appellant's response thereto dated 19 October 2025

DECISION

1. This is an appeal against Revenue Scotland's decision to amend to NIL the Appellant's claim for repayment of Additional Dwelling Supplement ("ADS") in the sum of £25,500. That ADS had been charged under section 26A and Schedule 2A of the Land and Buildings Transaction Tax (Scotland) Act 2013 ("the Act").

Preliminary issue

2. The Notice of Appeal, which was received by the Tribunal on 1 August 2025, was in the name of Ms Kimm only, albeit the Review Conclusion Letter and Closure Notice were addressed to Ms Kimm, Mr Alastair Whiteside and Mr Stephen Whiteside. Section 247 Revenue Scotland and Tax Powers Act 2014 ("RSTPA") provides that an appeal may be brought by any of the "buyers" of a property and the decision of the Tribunal will bind all buyers where only one appeals.

3. In fact, the parties to the relevant transaction were Ms Kimm, Mr Alastair John Whiteside and the Trustees of the Estate of the late Lynn Whiteside, namely Alastair John Whiteside and Stephen Alastair Whiteside.

4. Unfortunately, the Land and Buildings Transaction Tax ("LBTT") return, as amended, stated that the buyers were Ms Kimm, Mr Alastair John Whiteside and Stephen Alastair Whiteside as individuals.

The legislative provisions relating to repayment of ADS at the relevant time

5. Paragraph 8(1) Schedule 2A of the Act read:

"Repayment of additional amount in certain cases

8(1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

- (a) within the period of 18 months beginning with the **day after the effective date** of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
- (b) that dwelling was the buyer's **only or main residence at any time** during the period of 18 months ending with the effective date of the transaction, and
- (c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

6. Paragraph 8A of the Act went on to provide that:

"Repayment of additional amount: spouses, civil partners and co-habitants replacing main residence

8A(1) Sub-paragraph (2) applies in relation to a chargeable transaction to which this schedule applies by virtue of paragraph 2 if—

- (a) there are only two buyers, and
- (b) the buyers—

- (i) are (in relation to each other) spouses, civil partners or cohabitants, and
 - (ii) are or will be jointly entitled to ownership of the dwelling that is or forms part of the subject-matter of the transaction.

- (2) Paragraph 8 has effect in relation to the transaction as if—

- (a) the reference in sub-paragraph (1)(a) of that paragraph to the buyer were a reference to either or both of the buyers, and
 - (b) the references in sub-paragraph (1)(b) and (c) of that paragraph to the buyer were references to **both of the buyers together**.

- (3) For the purposes of sub-paragraph (1)(b)(i), two buyers are cohabitants if they live together as though married to one another.”

7. We have highlighted in bold the key words.

Factual background

8. The underlying facts are not in dispute.

9. Ms Kimm and the two other parties jointly purchased a property, No 12, (“the Second Property”) with an effective date of 26 January 2024. Her share of the Second Property was 50% and the other two parties owned 25% each. The purchase price was £425,000.

10. The electronic LBTT return and an amendment thereto were submitted on 31 January 2024 and on 25 February 2024 the LBTT due in the sum of £41,350, including ADS in the sum of £25,500, was paid. In fact the tax should have been paid on the earlier of the filing dates (25 February 2024) or five working days after the return was filed.

11. On the effective date Ms Kimm owned another property, No 4 (“the First Property”). Under the heading for ADS in the return, the answer to the question “Does the buyer intend to sell their main residence within 18 months?” was “No”.

12. The First Property was sold on 3 May 2024.

13. On 13 May 2024, the buyers’ agents (the “Agents”) further amended the return to reclaim the ADS.

14. Discussion then ensued between Revenue Scotland and the Agents and, on 12 July 2024, the Agents confirmed that Mr Alastair Whiteside had sold his previous main residence prior to the effective date and that Mr Stephen Whiteside had never resided in the Second Property.

15. On 26 July 2024, Revenue Scotland issued a Notice of Enquiry under section 85 of RSTPA. Revenue Scotland explained that the ADS legislation had been recently amended and that the changes took effect only in respect of transactions with an effective date after 1 April 2024. Accordingly, the previous legislation, being paragraphs 8 and 8A of Schedule 2A, as narrated at paragraphs 5 and 6 above, of the Act, applied to the Second Property.

16. Revenue Scotland argued that
 - (a) Condition 8(1)(a) ("condition (a)") could not be met since Mr Alastair Whiteside had sold his property before the effective date.
 - (b) Condition 8(1)(c) ("condition (c)") could not be met since Mr Stephen Whiteside had never resided in the Second Property.
17. On 22 August 2024, the Agents responded to Revenue Scotland stating that:
 - (a) Mr Alastair Whiteside had sold his main residence on 26 January 2024 (ie on the effective date) and moved into the First Property with Ms Kimm whilst the Second Property was being refurbished.
 - (b) Mr Stephen Whiteside is the son of Mr Alastair Whiteside and co-trustee with him in the estate of the late Lynn Whiteside.
18. Correspondence ensued and it was established that the LBTT return had been incorrect in suggesting that Mr Stephen Whiteside had purchased 25% of the Second Property as an individual.
19. On 10 September 2024, Revenue Scotland wrote to the Agents confirming that, in their view, regardless of Mr Stephen Whiteside's situation, there could be no repayment of ADS since Mr Alistair Whiteside could not meet condition (a).
20. The Agents replied on 25 October 2024 stating that they were instructed to seek a second opinion. Having heard nothing further, Revenue Scotland wrote to them on 13 February 2025 asking for a response. On 27 February 2025, the Agents replied pointing out that if the Second Property had been purchased after 1 April 2024 then the ADS would have been repayable since both buyers would not have had to have sold their property after the purchase of the Second Property. The change in the legislation was "an admission that the existing rules were not fair and...were very obscure...".
21. On 27 March 2025, Revenue Scotland issued a Closure of Enquiry letter under section 93 RSTPA upholding the decision not to repay the ADS. It was explained that Revenue Scotland could not consider whether or not the legislation was fair. Revenue Scotland confirmed that in the circumstances they would not issue penalties under sections 182-183 RSTPA.
22. On 24 April 2025, the Agents requested a review on the basis that:
 - (1) The legislation in force at the effective date was amended and new guidance was issued a matter of weeks after the refund of the ADS was requested. The previous guidance had been deemed to be unfair and the review of that legislation and guidance had been ongoing for a significant period of time previously.
 - (2) The outcome in the Closure Notice was contrary to the purpose of the legislation which was to control the purchase of multiple dwellings which would not be main residences.
 - (3) The guidance and advice offered to the public is not fit for purpose and is complex.

(4) It is “extremely harsh” to be punished by such a complex ruling.

23. On 22 May 2025, Revenue Scotland issued their View of the Matter letter. In summary, the Review Officer indicated that Revenue Scotland’s view was that condition (a) had not been met since only Ms Kimm had sold her previous residence in the 18 month period and paragraph 8(1)(b) (“condition (b)”) had not been met since the First Property had never been the only or main residence of either Mr Stephen Whiteside or Mr Alastair Whiteside.

24. On the evening of 22 May 2025, the Agents emailed Revenue Scotland with a letter dated 21 May 2025. That letter recognised that the decision of the Tribunal in *Dr Crawford v Revenue Scotland* [2022] FTSTC 3 (“Crawford”) dealt with very similar circumstances but argued, again, that the legislation was amended because decisions like that would have been “deemed to have been unfair”.

25. It was noted that the Tribunal had no discretion to decide that the law was unfair but it was argued that:

- (a) “...a ruling which is clearly unfair to the extent that it led to a change in the rules and one that would not be adhered to today is a different matter altogether”.
- (b) The buyers had been prejudiced because the guidance and information provided by Revenue Scotland to the public and “the legal industry” was not fit for purpose.
- (c) *Crawford* had not been brought to the Agent’s attention by Revenue Scotland and had only been identified when they sought a second opinion from a specialist who had undertaken “a degree of research and investigation”.
- (d) Other colleagues and peers believed that the repayment should be made; Revenue Scotland’s guidance did not address the issue of one of two joint buyers selling a main residence on the effective date of a joint purchase.
- (e) Ms Kimm and Mr Whitehouse were a couple who simply purchased a property together and sold their original properties; they were the “unnecessary victim of the legislation which has simply been deemed to have been unfair”.

26. On 5 June 2025, the Agents again wrote to Revenue Scotland to reinforce their argument that the original legislation was “flawed to the extent it was changed” and “Nobody, not even tax specialists, can easily find any guidance on what the actual rules are, meaning purchasers are finding themselves having to pay ADS that might have been avoided”. No adequate response on these issues had been received by the Agents from Revenue Scotland.

27. On 4 July 2025, Revenue Scotland issued its Review Conclusion letter. That concluded that:

- (a) Having regard to paragraph 7 of Schedule 2A of the Act (ie where a buyer is acting as trustee of a settlement and a beneficiary of that settlement will have a relevant interest in the Second Property), Mr Stephen Whiteside would be treated as a buyer and would have to meet the repayment conditions.

- (b) Neither Mr Whiteside met condition (a).
- (c) The First Property was never the main residence of either Mr Whiteside so repayment condition (b) was never met by them.
- (d) Mr Stephen Whiteside had never resided at the Second Property so condition (c) was not met.
- (e) Revenue Scotland did not have the authority to consider special circumstances or fairness.
- (f) Revenue Scotland's guidance is regularly reviewed and updated to provide "all with relevant and accurate information".
- (g) The decision to refuse the repayment and amend the return to NIL was upheld.

28. On 1 August 2025, the Notice of Appeal was filed with the Tribunal and it reiterated all of the arguments that had previously been advanced.

29. Revenue Scotland's Statement of Case with appendices was filed on 16 September 2025. In large measure it reiterated the arguments previously deployed. However, under a heading "Overview of Trust specific provisions", it advanced a new analysis of paragraphs 7, 13 and 14 of Schedule 2A of the Act concluding that only Ms Kimm and Mr Alastair Whiteside required to meet the repayment conditions.

30. The Agents' response to the Statement of Case dated 19 October 2025 pointed out that that new analysis was contrary to the position that had previously been argued by Revenue Scotland and that confirmed their previously expressed view that the ADS legislation and guidance were complex and poorly explained. They reiterated their view that:

- (a) Ms Kimm should not be "punished for breaching conditions of legislation which are no longer in place, and which would not have penalised her had the transaction taken place today", and
- (b) "The guidance, advice and subsequent explanations by Revenue Scotland are not acceptable for the public or even legal professionals."

Discussion

31. As this Tribunal explained in *Crawford* at paragraph 23 *et seq*:

"23. ...the charging provisions in Schedule 2A of the Act were introduced by the Land and Buildings Transaction Tax (Amendment) (Scotland) Act 2016 and it provides for additional LBTT, being the ADS, to be paid by those buying **second** homes. We have highlighted the word **second** because that is the focus of the ADS legislation.

24. The following year the Land and Buildings Transaction Tax (Additional Amount – Second Homes Main Residence Relief) (Scotland) Order 2017 further amended Schedule 2A by the introduction of paragraphs 8A and 9A.

25. As the Tribunal pointed out at paragraph 31 of *Goudie [and Sheldon v Revenue Scotland]* [2018] FTSTC 3] the Policy Note made clear the Policy Objectives when it stated:-

“It is necessary to bring forward an amending instrument as the legislation as currently drafted does not give full effect to this policy attention. It has emerged that the ADS legislation has been too tightly drawn in certain specific circumstances.”

Clearly it was intended to be tightly drawn.

26. In 2018, the Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Act 2018 made the provisions to the 2017 Order retrospective.”

32. In 2024, The Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 further amended Schedule 2A. On this occasion, the Scottish Parliament did not make the provisions retrospective and indeed it specifically stipulated that the Order came into force on 1 April 2024.

33. It is trite law that the Tribunal was created by statute and that therefore its jurisdiction is derived wholly from statute. The Tribunal cannot consider the “spirit of the legislation” but must apply the law as enacted by the Scottish Parliament.

34. We find that the intention of the Scottish Parliament in respect of the repayment of ADS, at the time with which we are concerned, is clear from the words of the Act; that is that ADS was only repayable in the limited circumstances set out in paragraph 8(1) of Schedule 2A to the Act.

35. The fact that the Act was subsequently amended further cannot affect the application of the law as at the effective date and when the application for repayment of ADS was made.

36. Revenue Scotland now accept that condition (c) is met. We accept that had Mr Alastair Whiteside sold his property the day after the effective date then condition (a) would have been met for both Ms Kimm and Mr Whiteside. He did not.

37. Unfortunately for Ms Kimm and Mr Whiteside, they simply do not fall within the limited circumstances within which the Scottish Parliament intended to permit the repayment of ADS at that time since all of the conditions must have been met by the buyers.

38. The legislation contains no provisions giving Revenue Scotland, or the Tribunal, the power to extend those circumstances. We understand why Ms Kimm and Mr Whiteside might consider the law to be unfair.

39. However, in its Statement of Case, Revenue Scotland is correct to quote *Goudie* in which, having quoted from the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 (TCC), it is stated at paragraph 67 that: “This Tribunal does not have jurisdiction to consider...fairness.”

40. It does not.

41. In addition, the Tribunal does not have jurisdiction in relation to the guidance issued by Revenue Scotland. Unless it is stated to have the force of law it is simply Revenue Scotland's interpretation of the legislation. If the appellant has issues with such guidance, as appears to be the case here, then that is not a matter for the Tribunal and should be pursued with Revenue Scotland.

42. The Tribunal's interpretation of the legislation is to be found in the Decisions issued by the Tribunal. All are published on the Tribunal website. A cursory glance at the headnotes will indicate the subject matter. *Crawford*, which was published in early 2022, had very similar headnotes to those in this Decision. Even if the legislation is perceived as being complex, the position where a property was sold on the effective date has been plainly set out in unambiguous language since then.

43. Mr Alastair Whiteside was a buyer and he did not sell an only or main residence in the relevant period prescribed by the legislation which applied at that time. That being the case we do not require to address the arguments on Mr Stephen Whiteside since the appeal cannot succeed.

44. As we found in *Crawford*, the legislation in terms of the sale of an only or main residence, as then enacted, was unambiguous and the meaning was clear.

Decision

45. For all these reasons we uphold Revenue Scotland's decision.

46. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the right to apply for permission to appeal on a point of law pursuant to Rule 38 of the First-tier Tribunal for Scotland Tax Chamber (Procedure) Regulations 2017. In terms of Regulation 2(1) of the Scottish Tribunals (Time Limits) Regulations 2016, any such application must be received by this Tribunal within 30 days from the date this decision is sent to that party.

ANNE SCOTT

President

RELEASE DATE: 18 November 2025